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MICHAEL RODAK,

No. 73-1385

In the Supreme Court of the United States

OCTOBER TERM, 1973

WILLIAM KNAPP,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CHARLES A. BELLOWS
One IBM Plaza
Chicago, Illinois 60611
Attorney for Petitioner

JASON E. BELLOWS
RONALD N. HEFTMAN
On the Brief

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

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Petitioner, William Knapp, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in this cause on January 18, 1974.

Opinion Below

The Court of Appeals affirmed Petitioner's conviction by an unpublished order, which is reprinted as Appendix A, infra. That order was modified by a subsequent order of the Court of Appeals, dated February 12, 1974, which is reprinted as Appendix B, infra.

Jurisdiction

The judgment of the Court of Appeals was entered on January 18, 1974. A timely Petition for Rehearing and Suggestion of Appropriateness of a Rehearing En Banc was filed, and was denied on February 12, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Questions Presented for Review

1. Whether a jury may be instructed in a mail fraud prosecution that a defendant's good faith defense is invalid if they find that he failed to exercise "reasonable diligence", and failed to act as a "reasonably prudent person", in ascertaining whether certain medical bills and reports, which were prepared by another party and submitted by the defendant to insurance companies, contained false representations?

2. Whether the defendant was denied due process of law, where the prosecution pointed out to the primary government witness that a pre-trial statement exculpatory of the defendant was "inconsistent", where that activity resulted in the witness changing his testimony; and where two other governmental witnesses, who had also made pre-trial statements exculpatory of the defendant, also changed their testimony at trial? Is a defendant denied due process of law when the government, knowing that government witnesses are going to testify in a manner contrary to their prior statements which were favorable to the defendant, does not disclose that fact to the defense, and does not reveal the fact of the prior inconsistent statements on the direct examination of the witnesses?

Statement of the Case

Petitioner William Knapp, an attorney, was charged with one Herbert Meyer, a physician, with five counts of violating the federal mail fraud statute, 18 U.S.C.A., Section 1341. The indictment charged, in substance, that Knapp and Meyer devised a scheme to defraud certain insurance companies, and that in furtherance of the scheme Dr. Meyer examined clients of Knapp who had been involved in automobile accidents; that Meyer prepared and caused to be prepared false medical bills and reports, and that Knapp sent these bills and reports, containing false and fraudulent pretenses, to insurance companies as the basis upon which to settle accident cases, knowing that they were fraudulent. The indictment further alleged that Petitioner and Meyer caused clients of Petitioner to stay home from work to increase their damages, and that Petitioner engaged persons to refer accident victims to him.

Each count of the indictment alleged a separate mailing in furtherance of the scheme, and each mailing pertained to a specific automobile accident case in which Petitioner was the attorney, and Meyer the treating physician.

The Government's Case

Dr. Herbert Meyer, the co-defendant who entered into an agreement with the Government to plead guilty to one count and receive, in return, a recommendation for probation from the United States Attorney, testified that he met William Knapp in 1957 or 1958, and that Knapp thereafter referred accident patients to him for treatment. He said that sometime during 1963 or 1964, Knapp indicated to him that his medical bills should be increased so that he would have the edge he needed in negotiations with insurance companies. (Tr. 35)

Between July, 1964 and October, 1969, Meyer maintained an office at 30 W. Randolph Street, Chicago, Illinois, in the same suite with Knapp and another attorney, William Richards. (Tr. 37-8) Meyer said that shortly after he moved into the suite Knapp, noticing that he was behind in typing medical reports on accident cases, offered to type some of Meyer's medical reports for another attorney. (Tr. 42) Meyer said that subsequently Knapp began typing the medical reports on his own cases. (Tr. 42)

Meyer said that he met John Knapp, the brother of the defendant, in late 1956. He testified that John Knapp operated the Hyde Park Auto Repair and the Kenwood Auto Repair stores. Meyer said that in the late summer of 1969, Knapp told him that his brother was going to refer accident cases to him from his auto repair business. (Tr. 45-6)

Meyer further testified that in this series of conversations he questioned the accuracy of some of the medical reports which he said Knapp typed for him. He said that he indicated to Knapp that the patients had not been in the office that number of times, and that Knapp replied that it was necessary to increase the size of the itemized bills submitted to insurance companies in order to obtain an adequate settlement. (Tr. 49)

From October, 1969 through November, 1970, Meyer was ill, and saw his patients only at the Illinois Masonic Hospital, and at an office located at 3355 North Clark Street in Chicago. (Tr. 50) During this period Meyer maintained his files in his home, assisted by his daughter and her girlfriend. (Tr. 50-1) Meyer stated that during this period he would see Knapp weekly in his home, when Knapp brought medical reports for his signature. (Tr. 51)

Dr. Meyer identified Government Exhibits 1-G-1 and 1-G-2, as medical reports which he signed for Viola Miles

and Martha McGee, dated November 17, 1969, and relating to Count One of the indictment. He said that Knapp gave him the reports for his signature, and that he neither typed it nor had it typed. (Tr. 52-3) Meyer said that after signing the reports he told Knapp that they had not been in his office as many times as the reports reflected, and that Knapp replied, "Don't worry, we have to build up the bill." (Tr. 62)

On cross-examination, Meyer was asked, "Dr. Meyer, do you really remember anything that took place on November 17, 1969, on which somebody brought you a report of Martha McGee and Viola Miles? You don't remember anything, do you?" Meyer replied, "No, I don't." (Tr. 149)

Meyer identified Government Exhibit 2-E-1 as a doctor's report on one Tinsel Burress, signed by him and dated October 20, 1970, relating to Count Two of the indictment. (Tr. 63) Meyer said he did not dictate or type the report, and that it was not prepared at his direction. (Tr. 64) Meyer also identified Government Exhibit 8-H as a record of his examination of Tinsel Burress at his office at 3355 North Clark Street. (Tr. 67) Meyer's diagnosis on the examination card did not conform to his diagnosis on Government Exhibit 2-E-1, the medical report dated October 20, 1970 which he had signed.

Meyer identified Government Exhibit 4-D-6, a doctor's report on one Joyce Suter dated October 23, 1970 and relating to Count Four of the indictment. (Tr. 70-1) Meyer said that he did not type the report, that he received it from Knapp (Tr. 77), and that after signing the original he returned it to Mr. Knapp. (Tr. 71) He also identified Government Exhibit 8-G as the file card from his Clark Street office on Joyce Sutter, containing his treatment and

diagnosis of her. The diagnosis on the file card did not conform to the more serious description on injuries on the medical report. (Tr. 74-6)

Meyer identified Government Exhibit 4-D-5 as a medical report, signed by him and dated October 23, 1970, on Charles Suter. He said that he received it from Knapp and that after signing the report he returned the original to Knapp. (Tr. 77) He identified Government Exhibit 8-F as his office record of the treatment of Charles Sutter. (Tr. 78) The objective symptoms contained in the medical report were more serious than the objective symptoms noted on the office record card. (Tr. 79-81)

Meyer identified Government Exhibit 3-D-3 as a doctor's report on one Roosevelt Adams signed by him and relating to Count Three of the indictment. (Tr. 81-2) He said that the report was not prepared by him or at his direction, and that Knapp gave it to him for his signature. (Tr. 83) He identified Government Exhibit 8-C-1 as an admittance slip to the clinic at Illinois Masonic Hospital. (Tr. 84-5) The slip contained Meyer's diagnosis, which was "injuries to the neck and back." (Tr. 86) The medical report which Meyer signed on Adams stated that he had, "cerebral concussion, laceration of the forehead and severe lumbar strain and sprain." (Tr. 87)

Meyer identified Government Exhibit 5-G-1 as a doctor's report on Harold Wallace, signed by him and dated July 17, 1970, and relating to Count Five of the indictment. (Tr. 91) He said that Knapp gave him the report to sign. (Tr. 91) He also identified Government Exhibit 8-D-1 as an outpatient slip from Illinois Masonic Hospital relating to Harold Wallace, and containing the findings of his examination of Wallace. (Tr. 93) The diagnosis on the slip was, "pain

and stiffness, apparently generalized." The diagnosis on the medical report was, "Hyperextension, hyperflexion injury to the cervical spine, contusion to the lumbar region and a cerebral concussion." (Tr. 94)

Over defense objection Meyer also identified medical reports relating to two accident cases not charged in the indictment. He identified Government's Exhibit 6-D-2 as a doctor's report, signed by him and dated July 27, 1970 on one Marshand DeLoney, which Knapp gave him to sign (Tr. 103-4) He identified Government Exhibit 7-G-1 as a doctor's report, signed by him and dated November 17, 1970, on one Georgia Young. (Tr. 105-6) He said that "either Knapp or someone representing him" gave him the report to sign. (Tr. 106) He also identified Government Exhibit 8-E as a patient card from his Clark Street office on Georgia Young. (Tr. 107) The patient card showed an initial visit on September 14, 1970, and described her condition as "Sustained injuries of neck and upper portion of back. Also has headaches at base of neck and temporal area of scalp." The medical report which he signed relating to Georgia Young showed an initial visit on September 4, 1970, and 25 subsequent visits. Her injuries were described as, "Swelling and contusion of the scalp and a cerebral concussion." (Tr. 106-7)

On cross-examination Meyer stated that all of the medical reports involved in the accident cases named in the indictment "could" have been brought to him by someone from Knapp's office. (Tr. 147)

Meyer stated that during the period of October, 1969, through November, 1970, he had conversations with Knapp concerning the diagnosis contained in the reports. However he could not recall the conversations regarding the specific reports, with the exception of those relating to

Mrs. McGee and Mrs. Miles. (Tr. 109) He said that he pointed out to Knapp that these reports were inconsistent and had extra dates, and Knapp said that he was copying old reports and varying the wording somewhat. (Tr. 110)

On cross examination, Meyer admitted that in a pre-trial statement taken from him by Knapp's attorney, at which an Assistant United States Attorney and a postal inspector were present, he said that he did not ever have any conversations with Knapp with reference to the reports on Mrs. McGee and Mrs. Miles. (Tr. 111-113) When questioned about his reason for changing his statement, he said the prosecutors were concerned about the statement he made to Knapp's attorney. (Tr. 167) He said they referred to the particular portion of the statement where he said that he had never talked to Knapp about Mrs. McGee and Mrs. Miles, "and they said this was inconsistent." Meyer said he had been thinking about it and so he changed his story. (Tr. 169)

Dr. Meyer stated that his attorney had told him he could go to the penitentiary and lose his license if he was convicted, and that it was on his advice that he agreed to be a government witness. (Tr. 114) He stated that although nobody had promised that if he cooperated with the government his license might be saved, there was discussion with his lawyer to this effect and no proceedings had as yet been brought by the Department of Registration and Education to remove his license.

During the time that Mr. Knapp referred patients to him, he was examining patients for about ten other lawyers. (Tr. 123) Dr. Meyer admitted that of his own accord, he had exaggerated in the medical reports the extent of the injuries and visits of some of the patients sent to him by other lawyers. (Tr. 123-125) He stated that on occasions

he would tell a patient that he would add visits on his medical report so that it filled the gap between the time of the occurrence of the accident and the time that the patient came to him. (Tr. 143)

Meyer had been questioned by Postal Inspectors between 10 and 20 times. In one statement to them he said "that the bills and reports in question had been prepared by Mr. Knapp or a member of his office staff and presented to him for his signature." (Tr. 156) He also told the Postal Inspectors that because he did not get his bills paid in full he would in making of his own accord medical reports for various lawyers other than Knapp, increase the number of visits and the dollar value of the bills and the injuries to compensate for not getting payment on the full bill. (Tr. 156, 158) He further stated that he would exaggerate the reports and take a figure out of the air for a patient's bill in accident cases. (Tr. 158)

Bethany Meyer, the eighteen year old daughter of Herbert Meyer, testified that from June through September, 1969, when she was 14 years of age, she worked for her father as his secretary at 30 West Washington Street. (Tr. 176) During that period, she saw Knapp frequently in her father's office. She said he came in occasionally to get patients' files, and also brought bills or reports with him for her father's signature. He would take the original copy and give her the duplicate to be filed. (Tr. 178)

Bethany Meyer said sometime during the period June-September, 1969, she had a conversation with Knapp in her father's office, wherein she asked Mr. Knapp why there were no files for some of the medical reports he was giving her, and why there were no records of the patient's visits. (Tr. 180) She claimed that Knapp said that it was because

insurance companies do not pay the full bill and it was necessary to hike the bill and put in false amounts and false visits in order to get a fair amount. (Tr. 181)

She testified that she was also employed by her father during the period September, 1969 through September, 1971, on a part-time basis while her father maintained an office in his home. (Tr. 181-2) She said that during this period Knapp would bring reports to her father at his home for signature, and that in some cases she could not find case files for the reports. (Tr. 183)

On cross-examination she stated that she was first interviewed by postal inspectors in the early spring of 1972, after her father had been indicted. She was informed in advance by her father that she was going to be interviewed by a postal inspector and it was her understanding that no matter what happened she was to cooperate.

She said that at the time her father's office was at 30 W. Washington, a girl by the name of Stella Christie worked for her father as a typist and a receptionist. She had seen Stella Christie type medical reports. (Tr. 210) A girl named Debbie Fuller worked for her father the following summer and she also typed a few reports. (Tr. 215)

She testified that her father kept a loose record of dates and visits by patients. He didn't always record dates when people came in, and didn't always record the kind of treatment he gave to various patients who were involved in automobile accidents. (Tr. 216) She could only remember a patient or two whose reports Knapp brought in for which she did not have the file. (Tr. 217-18) One was Roosevelt Adams and another a Spanish name such as Lucio or Pedro. She said that it was possible that the reason she couldn't find files for some of Knapp's reports was her father's failure to keep records. (Tr. 217)

She knew of instances that her father personally prepared reports that were not true as to the number of visits. He also dictated to her reports which were false insofar as the number of visits were concerned. (Tr. 220)

She also stated that her father was ill with hepatitis from December, 1969 through December, 1970, and that his memory was defective during that period. (Tr. 219)

Charles Suter testified that he and his wife were in an automobile accident on July 2, 1970. A man named Jesse came up and offered to take him to a lawyer after taking him to Hyde Park Auto to have his car repaired. His wife was driven to Jackson Park Hospital by the police and Jesse later drove him and his wife from the hospital to the Hyde Park Garage to have the car repaired. The next day Jesse drove him to the Hyde Park Garage again. He was taken by a man from the garage to Knapp's office. (Tr. 244) He said that Knapp told him to take off from work, and recommended that he see a doctor. Knapp made an appointment for him with Dr. Meyer for the next day. (Tr. 246)

The next day he saw Dr. Meyer. Dr. Meyer did not examine him and did not prescribe treatment. (Tr. 247) Suter and his wife went to a drug store at 35th Street where his wife bought a collar for her neck and she had a prescription filled. (Tr. 248) Later he called Knapp and said he wanted to go to another doctor and Knapp said he could go anywhere he wanted. (Tr. 250) He called Knapp nine days later and told him he had to go back to work. He said that Knapp said he wanted him to stay off longer, but that he told Knapp that he had to go back and asked for a release. Knapp told him to come to the office and get it, which he did that same day. (Tr. 252)

On cross examination, he identified a 3500 statement bearing his signature dated July 12, 1971. One of the

questions asked him in the statement was, "Did the attorney discuss time off from work?" The answer was, "No." (Tr. 262) Another question put to him in the statement was, "Did the attorney ask about hospitalization?" The answer was "No." He said he did not remember these questions or the answers. (Tr. 263)

Suter testified before the grand jury in connection with this case, but he said he did not know what he told the grand jury. (Tr. 265)

Suter further testified that prior to trial, two men approached him at his home, indicated that they worked for Knapp, and offered him money if he would not testify against Knapp. (Tr. 27-2) He said he refused the offer, and told the men that he was very dissatisfied with the settlement he received from Knapp in the case.

Joyce Suter, the wife of Charles Suter, testified that she went to Jackson Park Hospital after the accident. A couple days later she went to see Dr. Meyer in his office on North Clark Street. (Tr. 282) Dr. Meyer told her to administer some heat and gave her some pain killers. She has not seen Dr. Meyer since that day.

She went to see Knapp at his office some time later to discuss accepting the settlement check that Knapp had received. She said Knapp told her there might be a wait of five years before her case would come up for trial, and since they were pressed for money, she and her husband accepted $600.00. Knapp showed her bills for the car and from the doctor. (Tr. 287) Knapp had a check for about $2,000, which she signed. After Knapp told her that Charles, her husband, was going to get $300 and she was going to get $300, she asked who was going to get the rest of the money. Knapp said the car bill and the doctor's

bill have to be paid. (Tr. 289) She said that she told Knapp that she had only seen the doctor once and called him a crook, and that Knapp "laughingly" told her that he went to school to learn how to be a crook. (Tr. 290, 302)

Viola Miles testified that she had an accident on August 30, 1969. (Tr. 329) She was walking with Martha McGee when they were struck by a neon sign that fell from a store. They visited Dr. Meyer, who examined and treated them both at his office. She met Knapp in the office. She visited Dr. Meyer twice as a result of the injuries sustained in the accident. Sometime in December, she received a call from Knapp and went to his office. He had a check which she endorsed. He cashed the check and he gave her $300 and $200 for Martha McGee. She denied that she had seen Dr. Meyer 24 times. (Tr. 338)

Roosevelt Adams testified that he was in an auto accident on April 1, 1970. (Tr. 360) A man approached his car and drove Adams home. The man recommended the Hyde Park Garage for the car repairs and someone from the garage took him to Knapp's office. (Tr. 363) Knapp asked him where and how the accident happened and referred him to Dr. Meyer. The accident happened on a Wednesday and he went back to work the following Monday. (Tr. 367) He did not remember any discussion with Knapp regarding taking time off. Dr. Meyer asked him about the accident but did not examine him or prescribe medication. He saw him one time. The second time he went to see Mr. Knapp, he picked up a check. He stated that he did not have a cerebral concussion, or a cut on the forehead, and denied that he saw Dr. Meyer 23 times.

Katie Carter, a licensed practical nurse, testified that between September, 1966 and February, 1969, she was em-

ployed part time by Dr. Herbert Meyer at 30 West Washington, and that Knapp had an office behind Dr. Meyer's office during that time. She would see him sometimes in Meyer's office and sometimes in his own. Sometimes Knapp would take a patient's file which was kept in a file cabinet in Meyer's office. She observed that he brought back medical reports which Dr. Meyer signed. (Tr. 424) She said that on some occasions she would be unable to find a file for the medical report. (Tr. 424)

On cross examination, she testified that Dr. Meyer kept a very disorganized office and files were sometimes missing. (Tr. 433) He had some young lady who would come in on Saturdays and prepare bills. (Tr. 433) She gave a deposition on January 9, 1973, in which she stated:

> "Now, as I said, the young lady that came in on Saturday mornings and evenings, whichever they found convenient, to type up his medical reports, that is the only person that I know of." (Tr. 441)

Georgia Young testified to a non-count occurrence. (Tr. 451) She had an accident on September 3, 1970, while driving in her own car. After the accident, as she was proceeding to her destination, someone pulled her over and had a conversation with her. She saw the man again the next day or two and he drove her to Knapp's office. She said that she told Knapp she was not injured and was only interested in having the car repaired. (Tr. 456) Knapp suggested she take it to the Hyde Park Auto Repair. She drove to Hyde Park Auto where she left it for repairs. She received either $225 or $250 from Knapp. She denied that she had seen Dr. Herbert Meyer. She denied that the man who stopped her on the street gave her a card.

On cross examination she said she gave a statement on March 11th in connection with this occurrence. In it she

was asked, "How did you happen to go to Mr. Knapp?" She replied, "A fellow gave me a card, gave me his card." (Tr. 470)

Tensil Burress testified that he was involved in an auto accident, and was referred to the Hyde Park Garage by a stranger. He drove his car to the Hyde Park Garage the next day. He talked to the manager and he was driven to Knapp's office by a man from the garage.

He said that Knapp told him he should see Dr. Meyer and also told him he should take time off from work because it would make the case stronger. (Tr. 494) He saw Dr. Meyer two days later. Dr. Meyer did not examine him but gave him a heat treatment and a prescription. He took off from work for nine days. He went to Dr. Meyer's office about five times but did not see Dr. Meyer. The nurse would give him heat treatments. Knapp gave him a check for $500 as his settlement in the case. Knapp did not tell him what the auto repair bill was nor the amount of the doctor's fee. (Tr. 498)

On cross examination, he said that he made two visits to the Postal Inspector's office before he signed a statement. He was interviewed on June 3, 1971 by postal inspectors McCarthy and Potter. He was asked whether they asked him:

"Did the attorney discuss time off from work?"

and whether he replied:

"Don't recall." (Tr. 502)

He testified that he did not recall making that statement but subsequently said it was "possible" that he had made that remark. (Tr. 503, 513)

He was also asked whether he was asked the question:

"On the first visit, did the doctor examine you?"

and whether he replied:

"Took off shirt and examined neck and back, and he told me to stay off work a few more days."

He said he did not remember making that statement. (Tr. 504)

Harold Wallace testified that on March 18, 1970, he was involved in an automobile accident. After the accident, he was taken to Hyde Park Auto by someone named Banks and then taken to Knapp's office. He stated that Knapp told him he should go into the hospital in order to get a better settlement, and he should take 2 weeks off from work. (Tr. 527) He said he was also told that during the 2 weeks he was off, he could pick up a check from someone named Knapp at Hyde Park Auto for $100 a week.

He said that Knapp gave him the address of Dr. Meyer. He went to Illinois Masonic Hospital where he met Dr. Meyer and told him that Knapp had sent him to be admitted into the hospital. Dr. Meyer said there was no space at that time. Wallace said he told Meyer that he wanted to have time off from work for about 2 weeks and Meyer agreed. He returned to see Dr. Meyer in three or four days. He said he went back to Hyde Park Auto and met a man named Knapp and received a check for $75. (Tr. 542) He went back there a week later but he did not receive anything from Knapp at that time. He then called William Knapp and complained that he didn't get the check, and told Knapp that he wanted to go back to work because he needed money. Knapp told him to go to Illinois Masonic and get a statement from Dr. Meyer which he did the fol-

lowing day. Subsequently he went to Knapp's office and received a personal check for $850 in settlement of his case. At the time he settled his case, he did not know the amount of either the doctor's bill or the car repair bill. He was not told the total amount of the settlement. (Tr. 548)

Representatives of the various insurance companies testified to the settlement of the claims involved in the various counts and in the non-indictment transactions on the basis of the medical specials and the property damage statements submitted by Knapp.

The medical reports, relating to the various accident victims involved in the indictment were false as to the number of visits made by victims to Dr. Meyer, and the injuries and treatment received, and it was stipulated by the defense that they were sent to insurance companies by mail.

A motion for a judgment of acquittal on behalf of William Knapp was denied. (Tr. 572)

The Defense Case

At the close of the prosecution's case counsel for petitioner informed the court that he was prepared to call a number of doctors who treated Knapp's accident clients, and who would testify that they were not given false medical reports to sign. (Tr. 574) Upon the prosecution's objection the trial court ruled that defense evidence of similar transactions wherein no fraud occurred would be limited to accident cases where Meyer was the treating physician. (Tr. 589)

As an offer of proof, defense counsel stated that he was prepared to present the testimony of Dr. Payton, Dr. McDonald, Dr. Walter Barth, Dr. Charles Scuderi, Dr. Harold

Diamond, Dr. Leonard Smith, Dr. Walker and Dr. Cooper as well as the deposition of Dr. Shapiro, who would testify that they examined accident clients of William Knapp and that Knapp never gave them prepared reports describing the injuries, number of visits, diagnoses and treatment, and that Knapp never asked them to submit false reports and bills.

Nathan Diamond, a court reporter, testified that on May 27, 1972 he went to an apartment at 9746 S. Emerald Avenue in Chicago with Wendell Wilson for the purpose of taking a statement from Charles Suter. He identified Defendant's Exhibit 6 as his notes of the conversation during the attempted interview. (Tr. 597) His transcription of the interview showed that neither he nor Wilson asked Suter whether he would accept money for not testifying against Knapp. (Tr. 597)

Wendell Wilson, the investigator who accompanied Diamond to the Suter interview, was employed by Knapp and his attorney to obtain statements from witnesses. He received instructions consisting of a list of questions to ask the witnesses and was told not to deviate from the questions. (Tr. 600) He also stated that he never asked Suter if he would accept anything in exchange for not testifying against Knapp. (Tr. 601)

William Knapp, testifying in his own defense, stated that he was a graduate of the University of Chicago, and the De Paul Law School. He was admitted to the Bar in 1952. (Tr. 605) He never had to respond to a complaint filed against him by anybody at the Chicago Bar Association and was the attorney for the United States Department of the Interior for Indian Affairs representing all the American Indians in the City of Chicago who are involved in any legal problems.

His brother, John Knapp, is in the automobile repair business, and he and some of his employees referred cases to him. He has never paid anyone money for referring a case to him and did not have any financial interest in his brother's repair shop. (Tr. 610)

Knapp denied that he ever told any client to stay home from work in order to get a better settlement. (Tr. 612) He said that he sent accident clients for examination and treatment to Dr. Meyer and several other doctors, and that Meyer treated only a portion of his personal injury clients. (Tr. 613) He denied that he ever prepared medical reports for himself or for any lawyer. He denied that he ever suggested to a client that he become hospitalized so he could get more money, and also denied any discussion with Meyer about hiking medical bills so that he could get a better settlement. (Tr. 614, 617)

Knapp said that Dr. Meyer examined from 75 to 100 clients for him and referred approximately 75 accident cases to him. (Tr. 618) His clients never told him how many times they had visited Dr. Meyer. At the time the medical reports concerning Mrs. Miles and Mrs. McGee, Mr. and Mrs. Suter, Burress, Wallace, Adams, and Young were submitted to him, Dr. Meyer's office was located at 3355 North Clark Street. Most of the time, Dr. Meyer would mail the medical report to his office. Sometimes when going to Dr. Meyer's home to discuss Meyer's personal affairs, he would receive some medical reports. (Tr. 619)

Knapp said that when he shared a suite with Meyer he did not employ anyone else in his office. He did not employ a stenographer, and an answering service handled his telephone calls. (Tr. 617)

Knapp said that he had no way of explaining Georgia Young's testimony that she did not see Dr. Meyer (Tr.

620) He said that he had seen the patient card on Georgia Young in Meyer's handwriting. (Tr. 620-1) He received Government Exhibit 7-G-1, a medical report relating to Georgia Young. He believed it was mailed to his office at 221 North LaSalle Street, and he relied on the truthfulness of the report. (Tr. 628) He did not tell Miss Young to stay away from work. He never discussed with Dr. Meyer the number of visits on the report. (Tr. 628) He said that as to all the reports introduced as Government exhibits, he relied on the honesty and integrity of Dr. Meyer as to the number of visits, treatments and diagnoses. (Tr. 629)

He received the total sum of $2250 from the insurance company for Mr. and Mrs. Suter. His fee was $750. The doctor submitted a bill for $315 for Charles Suter and $195 for Mrs. Suter. The repair bill was $677. Mrs. Suter was not satisfied with the settlement, so he reduced his fee so she could get $650. (Tr. 631) He did not tell the Suters to stay away from work. (Tr. 631) Mrs. Suter said the bills were too high but she never mentioned anything about the number of visits. He denied that she called him a crook and denied that he told her that he had gone to school to learn to be a crook. (Tr. 619)

He received $300 for Viola Miles and $300 for Martha McGee as a settlement of their cases. He gave Mrs. Miles $275 for both cases. (Tr. 631-2)

He received a total of $2,359 for Tensil Burress. His fee was $753. There was a repair bill of $853, a medical bill for $325, and $14 for photographs. He gave Burress $500 by reducing his fee by $166. (Tr. 636) He received $1,188 as a settlement for Roosevelt Adams. There was an automobile repair bill of $538 and a medical bill for $135. He gave him $150. (Tr. 67) He received $3,500

or Harold Wallace as a settlement. The garage repair ill was $947, the medical bill was $265, and he received fee of $850. He denied that he sent Wallace down to he Hyde Park garage to get money. (Tr. 637-9)

Knapp denied that he told Bethany Meyer that in order o get a settlement it was necessary to falsify records. (Tr. 40) He said that in five years of sharing an office suite vith Meyer he saw her only once on a Saturday when she visited her father, and that he never saw her doing any yping or filing of any kind. (Tr. 640)

He denied that he was guilty of the charges contained n the indictment.

On cross examination, Knapp testified that he had been handling personal injury cases arising out of automobile accidents since being admitted to the bar over twenty years previously. (Tr. 641) He said that Burress, Wallace and Georgia Young were referred to him by one William Green. He did not remember who brought Mr. and Mrs. Suter to his office, but that they said his brother had recommended them to him. (Tr. 645) He did not pay Green any money for bringing these people to him. He never paid any individual money for referring cases to him. (Tr. 646)

Knapp said that his mother and father were regular patients of Dr. Meyer, and that he treated them for injuries arising out of automobile accidents. Over defense objection, the prosecution was permitted to question Knapp about accident cases involving his parents in which Meyer was the treating physician. He stated that his mother was involved in automobile accidents in February, 1963, June, 1964, May, 1965, February, 1967, and March, 1970, and that Meyer was the treating physician in all these cases. He also stated that his father was involved in accidents in August, 1964, May, 1966, August, 1967, and March, 1970, and that

Meyer was also the treating physician in those cases. (Tr. 658-60)

Knapp denied that Dr. Meyer had told him that the Viola Miles medical report showed excessive visits. (Tr. 661) He also said that Viola Miles made no comment to him about the number of visits.

Knapp denied that he told Suter to take time off from work. (Tr. 665) He remembered that Suter called and said he was displeased with the doctor and that he was going to go to another doctor because Dr. Meyer was not helping him. (Tr. 667)

Knapp denied that Georgia Young told him at their first meeting that she was not injured. (Tr. 671-2) He also denied that she ever told him that she had never seen Dr. Meyer. (Tr. 672)

Knapp also denied that he told Tensil Burress to take time off from work. (Tr. 673-4) He also denied telling Adams to take time off from work in order to build up his settlement. (Tr. 676) He said that he explained the bill in the amount of $135 showing 11 visits to Adams, and that Adams did not question the bill. (Tr. 677)

He denied that he told Wallace to try to get into the hospital in order to build up the settlement. (Tr. 678) He denied that he told Wallace to pick up money at Hyde Park Garage while he was off work to tide him over. (Tr. 678) He went over the bills with Wallace, and Wallace did not question the amount of the doctor's bill. (Tr. 679)

Knapp further denied that he ever brought doctor's reports to Dr. Meyer for signature during the time Katie Carter worked for Meyer. (Tr. 684-5) He said he never took files from Meyer's office to type reports (Tr. 685), and never brought typed reports to Dr. Meyer's home for signature. (Tr. 687)

Marcella Louise Martin, a legal secretary, testified that in July, 1965 she was involved in an automobile accident which resulted in her being hospitalized. (Tr. 698) She stated that she had known Herbert Meyer for fifteen years, and that she saw him about 48 times during the next year for treatment of the injuries she received in the accident. (Tr. 700-1) She said that her attorney, Knapp, subsequently told her that he was unable to get a medical report from Meyer because he didn't remember treating her. (Tr. 699) She called Meyer in March, 1972, and he told her that he couldn't remember having treated her. (Tr. 702-3).

Eugene W. Potter, a Postal Inspector, testified that he was present when Tensil Burress was interviewed by another postal inspector, Inspector McCarthy. (Tr. 704-5) He identified a statement, dated June 3, 1971 in McCarthy's handwriting, and signed by Burress, in which Burress was asked, "Did the attorney discuss time off from work?", and Burress replied, "Don't recall." (Tr. 705-6)

Robert J. Comini, another postal inspector, testified that he questioned Charles Suter. (Tr. 710) He identified a report of that interview in his handwriting, and containing the following question and answer: Q. "Did the attorney discuss time off from work?" A. "No." (Tr. 711)

Several character witnesses testified that Knapp's reputation for honesty and integrity was good. (Tr. 731-735)

Rebuttal

In rebuttal, Izura Leftwich testified that she was a patient of Dr. Meyer, and that several times during the summer of 1969 she saw Bethany Meyer at Dr. Meyer's office acting as a receptionist (Tr. 764). She also said that she saw Knapp enter Meyer's office while Bethany Meyer was present. (Tr. 765)

Reasons for Granting Writ

1. Over defense objection, the trial court instructed the jury as follows:

> "William Knapp has claimed in his defense that even if you conclude that the information submitted to insurance companies was false, it was information furnished to him by Dr. Meyer and he didn't know it was false. Ignorance that a representation is false does not establish good faith, if the defendant by exercising reasonable diligence could have discovered that the representations were false.
>
> A person should know matters pertaining to his own business and one who makes reckless representations not knowing if they are true or false cannot be regarded as innocent because the positive assertion of a fact is by implication an assertion of knowledge concerning that fact.
>
> If you find that the defendant failed to exercise that degree of diligence which would be expected of a reasonably prudent person in determining whether the representations he was making to the insurance companies were true or false, the defendant's contention that he was ignorant of the falsity of the representation is not a valid defense." (Government Instruction 33; R. 59)

The propriety of this instruction must be measured against the rule that mail fraud is a specific intent crime, the successful prosecution of which requires proof beyond a reasonable doubt of the defendant's specific intent to defraud. See, e.g., *Williams* v. *United States,* 278 F.2d 535, 537 (9th Cir. 1960); *Beck* v. *United States,* 305 F.2d 595, 599 (10th Cir. 1962). "Without the knowledge, the

[criminal] intent cannot exist * * * Furthermore, to establish the intent, the evidence of knowledge must be clear, not equivocal." *Estep* v. *United States,* 140 F.2d 40, 45 (10th Cir. 1943).

Although the essential element of a "specific and actual intent to defraud" may be established by circumstantial evidence, the issue may never be whether a defendant was negligent, for it is "nothing less than personal knowledge of the fact" which will support a mail fraud conviction. *Phillips* v. *United States,* 357 F.2d 297, 303 (9th Cir. 1965). One who acts with even careless honesty does not possess the requisite intent to defraud. *United States* v. *Kyle,* 257 F.2d 559, 564 (2d Cir. 1958); *Estep* v. *United States,* 140 F.2d 40, 42 (10th Cir. 1943).

Government's instruction No. 33 not only permitted the jury to find Knapp guilty of mail fraud if they determined that he was negligent in not investigating the veracity of Meyer's bills and reports, but invited the jury to conclude that Knapp had actual knowledge of the falsity of the reports from the mere fact that he had submitted them to insurance companies. A portion of the charge stated:

> "A person should know matters pertaining to his own business and one who makes reckless representations not knowing if they are true or false cannot be regarded as innocent because *the positive assertion of a fact is by implication an assertion of knowledge concerning that fact.*" (emphasis supplied)

The jury was thus told that in merely submitting the false medical reports, Knapp was, by implication, asserting his knowledge of the falsity of those reports. If this were indeed the law, proof of an intent to defraud could be assumed from the mere fact that a misrepresentation was made. It is no overstatement to say that this portion

of the instruction imposes absolute liability under the mail fraud statute upon anyone who makes a false assertion, for the jury could have concluded that Knapp did innocently submit the false medical reports, yet because "the positive assertion of a fact is by implication an assertion of knowledge concerning that fact," found him guilty of mail fraud.

The remainder of the instruction, which advised the jury that they could find Knapp guilty if he made the representations in the reports "without reasonable diligence," was also erroneous. As we have shown, mail fraud is a specific intent crime, and a mere negligent misrepresentation does not come within the ambit of the statute.

At trial, the government relied upon *United States* v. *Meyer*, 359 F.2d 837 (7th Cir. 1966), in support of the instruction. However, *Meyer*, a hybrid mail fraud-Securities Act case, is itself unsound, and the instant instruction goes far beyond the instruction given in that case. In *Meyer*, the jury was instructed that the defendant's ignorance of the falsity of his representations could not be excused if he could have ascertained the true facts by the exercise of reasonable diligence. The instruction there did not include a statement that, "the positive assertion of a fact is by implication an assertion of knowledge concerning that fact," and this portion of the instant instruction is completely unsupported by *Meyer*.

Moreover, the *Meyer* instruction represents an incorrect view of the mail fraud statute. *Meyer* relies primarily upon *Stone* v. *United States*, 113 F.2d 70 (6th Cir. 1940). There the court acknowledged that good faith is a defense to a charge of mail fraud, and further acknowledged the rule that "Scienter may be inferred where lack of knowledge consists of ignorance of facts which

any ordinary person under similar circumstances should have known." This, standing alone, means nothing more than that knowledge may be shown by circumstantial evidence, but the court confused this rule with the premise that it proceeded to announce, that a defendant could be convicted if he "could have known by the exercise of reasonable diligence" that the statements he made were false. The court in *Stone* cited no authority for this rule, and it is clear from the cases cited earlier that this was an inaccurate statement.

Meyer, and the district court here, confused the rule that scienter may be inferred by circumstantial evidence, and that a defendant's reckless or negligent conduct in making representations is a relevant factor in such a determination, with the erroneous notion that recklessness or negligence ipso facto invalidates a good faith defense to a charge of mail fraud.

In the circumstances of this case, Government's Instruction No. 33 was pivotal. Knapp never challenged the fact that the medical reports signed by Meyer, and submitted to insurance companies, were false. Rather, his defense was premised on the proposition that Mayer had himself prepared the false reports, which he then submitted in good faith. Yet the government's instruction permitted the jury to infer that Knapp had knowledge of the falsity of the reports from the mere fact that he had submitted them to insurance companies, and further directed the jury to disregard Knapp's good faith defense if they found that he failed to exercise reasonable diligence in submitting the reports. This instruction permitted the jury to convict Knapp of mail fraud without ever having concluded that he knew Meyer's medical reports were false.

In affirming the conviction of Knapp on five counts of mail fraud by an unpublished order, the Court of Appeals termed "without merit" Knapp's contention that Government's Instruction No. 33 enabled the jury to convict him of mail fraud without finding that he possessed a specific intent to defraud. Citing *Irwin* v. *United States,* 338 F.2d 770 (9th Cir. 1964), cert. denied 381 U.S. 911, and *United States* v. *Schaefer,* 299 F.2d 625 (7th Cir. 1962), cert. denied 370 U.S. 917, the Court of Appeals dismissed Knapp's argument in one sentence of the order. (Order, p. 2) Examination of the cases cited by that court however, reveals neither of them to be in point. Further, Government's Instruction No. 33 represents an unprecedented expansion of the mail fraud statute, in that it authorizes a jury to convict a defendant of mail fraud upon finding that he has made negligent, as opposed to willful or reckless, misstatements of fact. For these reasons we petition for a writ of certiorari.

Irwin simply establishes that, "One who acts with reckless indifference as to whether a representation is true or false is chargeable as if he had knowledge of its falsity." Here the jury was instructed that they could find Knapp guilty if he made untrue representations without exercising *reasonable diligence,* a standard substantially different from the "reckless conduct" held to support a mail fraud conviction in *Irwin.*

In *Schaefer,* the defendant asserted that he had acted in good faith and on the advice of counsel in sending unregistered securities through the mails. The propriety of an instruction defining mail fraud in terms of negligence was never at issue, and the Court only held that good faith reliance on the advice of counsel was not a defense to a charge of using the mails to deliver an unregistered security.

Neither *Irwin* nor *Schaefer* dealt with the question of whether a defendant may be convicted of mail fraud, a specific intent crime, upon a finding that he failed to act as a "reasonably prudent person" exercising "reasonable diligence." Nor does either case address itself to the propriety of instructing a jury that, "the positive assertion of a fact is by implication an assertion of knowledge concerning that fact."

An essential element of mail fraud has heretofore been proof beyond a reasonable doubt of a specific intent to defraud. *United States* v. *Kyle,* 257 F.2d 559, 564 (2d Cir. 1958); *Estep* v. *United States,* 140 F.2d 40, 42 (10th Cir. 1943); *Williams* v. *United States,* 278 F.2d 535, 537 (9th Cir. 1960). Government's Instruction No. 33 goes beyond any mail fraud instruction previously approved by any Court of Appeals in bringing negligent misrepresentations within the ambit of the mail fraud statute. So drastic an expansion of the statute should not be accomplished without a review by this Court.

2. As the prosecution's case evolved, a pattern emerged of government witnesses who had made statements favorable to Knapp before trial, but who changed their testimony and incriminated him at trial. Herbert Meyer, the primary government witness, had told Knapp's attorney before trial that he had never had a conversation with Knapp about the medical reports and bills on Viola Miles and Martha McGee. At trial, he testified in considerable detail to such a conversation, in which he claimed that Knapp told him he was inflating the bills. (Tr. 62)

Similarly, Charles Suter and Tensil Burress both testified at trial that Knapp had told them to stay home from work to increase their settlements. Yet Suter was shown to have told postal inspectors before trial that he never

discussed staying home from work with Knapp, and Burress told postal inspectors before trial that he could not recall having any such conversation with Knapp.

While nothing in the record directly explains the changes in the testimony of Suter and Burress, the record is clear as to the reason for the change in Meyer's testimony. Meyer stated that the prosecution reviewed his pre-trial statement with him, and expressed "concern" over that portion of the statement wherein he said that he had never discussed the Miles and McGee reports with Knapp. Meyer said the prosecution "pointed out" that this statement was "inconsistent", and that he then changed his testimony. (Tr. 166-9)

The government's influence on Meyer, which resulted in his changing his testimony at trial, denied Knapp due process of law. A criminal trial is a search for truth, and the witnesses not the property of either party. *Gregory* v. *United States,* 369 F.2d 185 (D.C. Cir. 1966); *United States* v. *Vole,* 435 F.2d 774 (7th Cir. 1970). Meyer had received a recommendation of probation in exchange for his cooperation with the government, and was susceptible to government suggestion. If it was his recollection that he never discussed the Miles and McGee reports with Knapp, the prosecution had no right to exert any influence upon him which would result in a change in that testimony.

While the record does not so clearly illustrate the reason for the change in the testimony of Burress and Suter, it is a strange coincidence that both stated before trial that Knapp did not tell them to stay home from work, and that after each had several conferences with postal inspectors, each testified at trial that Knapp had done so. It is perhaps not inappropriate to point out that where defense witnesses have recanted on prior statements to government

agents which incriminated the defendant, they have been indicted for perjury. See e.g., *United States* v. *Letchos*, 316 F.2d 481 (7th Cir. 1963).

The government's influence on Meyer, which resulted in his changing his testimony as to whether he discussed the Miles and McGee reports with Knapp, and the strange circumstances of both Burress and Suter changing their testimony after interviews with postal inspectors, shows a pattern of government interference with witnesses which denied Knapp due process of law. Had Meyer persisted in his testimony that he had never discussed the Miles and McGee reports with Knapp, and had Burress and Suter not testified that Knapp had told them to remain home from work, the jury's verdict would almost certainly have been different.

CONCLUSION

For the above and foregoing reasons, we respectfully submit that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit in this cause.

Respectfully submitted,

CHARLES A. BELLOWS
One IBM Plaza
Chicago, Illinois 60611
Attorney for Petitioner
William Knapp

JASON E. BELLOWS
RONALD N. HEFTMAN
On the Brief

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Argued November 29, 1973
Decided January 18, 1974

Before

Hon. Tom C. Clark, Associate Justice*
Hon. Latham Castle, Senior Circuit Judge
Hon. Robert A. Grant, Senior District Judge**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIAM KNAPP,

DefendantAppellant

No. 73-1682

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division
No. 71-CR-1022
Frank J. McGarr, *Judge*

ORDER

William Knapp, an attorney, and Dr. Herbert Meyer, a physician, were charged in a five-count indictment with violating the Mail Fraud Statute, 18 U.S.C. § 1341, through a scheme to defraud insurance companies by

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* Associate Justice Tom C. Clark of the Supreme Court of the United States (Retired) is sitting by designation.

** Senior District Judge Robert A. Grant of the Northern District of Indiana is sitting by designation.

means of false pretensions. Prior to trial Dr. Meyer pleaded guilty and testified for the Government. Knapp was convicted on all counts. We affirm.

The gist of the offense was that Dr. Meyer would examine persons involved in automobile accidents which Knapp, as counsel, referred to Dr. Meyer for treatment. Knapp and Meyer prepared and caused to be prepared and mailed to the insurance companies false and fraudulent medical bills and reports of injury, the former being in excess of amounts of money actually due and the latter reflecting non-existent injuries and damages. Upon payment by the insurance companies, Knapp deducted the full amount of inflated medical bills, and both defendants caused the accident victims to absent themselves from their employment in order to fraudulently build up their damages. In addition, Knapp was alleged to have engaged runners who would refer accident victims to him. Knapp claims error on six points: (1) insufficiency of evidence, (2) the instruction that the jury might infer knowledge of the falsity of the medical reports from the fact that Dr. Meyer transmitted them to Knapp who, in turn, submitted them to the insurance companies, (3) limiting Knapp's proof of good faith by permitting testimony only of accident cases involving both him and Dr. Meyer, (4) abuse of discretion as to the refusal of the court to allow inspection of forty of Dr. Meyer's case histories involving Knapp's clients, (5) the admission of certain irrelevant and inflammatory testimony, and (6) permitting the Government to point out at trial to a Government witness that his prior testimony was inconsistent with that given previously. We find no merit in any of these claims.

We have again and again pointed out that it is not for us to pass upon the credibility of witnesses, *United States* v. *Karigiannis*, 430 F. 2d 148, 151 (7th Cir. 1970), *cert. denied, sub nom., Panagiotopoulos* v. *United States*, 400 U. S. 904 (1970). The evidence is overwhelming not only

as to the actual knowledge of Knapp as to the falsity of the medical reports but the testimony shows that Dr. Meyer so warned him on numerous occasions. Knapp's claims that Dr. Meyer's testimony was "completely destroyed" are for the jury, not for us. We find that the verdict is buttressed by the testimony of the doctor's daughter that Knapp had told her that he engaged in the common practice of falsifying medical bills. In addition, no less than three witnesses testified that Knapp told them that they had to take off from work in order to build up high damage claims. Likewise the complaint as to the charge of inferring knowledge on the part of Knapp is without merit. See, *Irwin* v. *United States*, 338 F. 2d 770, 774 (9th Cir. 1964), *cert. denied*, 381 U. S. 911 (1965); *United States* v. *Schaefer*, 299 F. 2d 625, 632 (7th Cir. 1962), *cert. denied*, 370 U. S. 917 (1962). Nor was Knapp entitled to discovery of the files concerning the alleged forty cases in possession of the Government. Such matters are within the sound discretion of the trial judge. *United States* v. *Cole*, 453 F. 2d 902, 904 (8th Cir. 1972), *cert. denied*, 406 U. S. 922 (1972). Here the motion was made one day before trial despite the mandate of Rule 16 (f), Fed. R. Crim. P., that it "may be made only within ten days after arraignment" without permission of the court. We also find the motion insufficient since it failed to allege that the documents were material to the defense and that the request was reasonable and the evidence relevant. *United States* v. *Iannelli*, 53 FRD 482, 483 (S.D. N.Y. 1971). The court also excluded the evidence of other non-fraudulent cases involving Knapp and doctors other than Dr. Meyer. This was a proper exclusion of testimony as to dissimilar acts. Perhaps such evidence might have been relevant in extenuating the punishment but not as to proof of guilt or innocence. *Grell* v. *United States*, 112 F. 2d 861, 875 (8th Cir. 1940). We find *United States* v. *Shavin*, 287 F. 2d 647 (7th Cir. 1961), cited by Knapp, to

be inapposite. There the indictment charged similar offenses against an attorney by the name of Shavin in the inflating of bills and altering of records of "physicians" without naming any specific doctor. The charge was therefore much broader than here where Dr. Meyer himself was also charged. While there was no objection to the admission of the evidence of the witness Suter when she called Knapp a crook and stated he told her that he went to school to learn how to be a crook, Knapp now claims error. We find that this testimony does not reach the degree of "plain error" affecting substantial rights to warrant reversal. Furthermore, the failure to object is a waiver to claim it here. Knapp had claimed that he relied on Dr. Meyer to provide true and correct medical bills. Mrs. Suter had testified that Knapp had told her that he engaged in the practice of falsifying medical reports. Her testimony went to Knapp's state of mind and was probative of his knowledge of the conduct of which the indictment complained. Likewise the testimony concerning Dr. Meyer's being the physician for Knapp's parents and having treated them for nine automobile accidents was likewise relevant. It proved the close relationship between Dr. Meyer and Knapp, who represented his parents in each of the accidents. Moreover it was relevant for impeachment since Knapp had testified that his parents had been in "possibly three or four accidents" while in fact the actual number was nine. Finally as to the prior statements of three Government witnesses which were *contra* to their testimony at trial, the jury was fully aware of this conflict and gave credence to the trial testimony. It therefore resolved the discrepancy against Knapp. This was its prerogative. In addition the other evidence was so overwhelming that a conspiracy actually existed and that Knapp was the central figure in it that the truth of the charge was proven beyond any shadow of a doubt.

Affirmed

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
February 12, 1974.

Before
Hon. Tom C. Clark, Associate Justice*
Hon. Latham Castle, Sr. Circuit Judge
Hon. Robert A. Grant, Sr. District Judge**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 73-1682 vs.

WILLIAM KNAPP,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
(71 CR 1022)

Frank J. McGarr, Judge

This matter comes before the Court on a petition for rehearing, filed February 1, 1974. On consideration of said petition, page 3 of the unpublished order entered by this Court in the above-captioned appeal on January 18, 1974 is amended as provided below.

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*Hon. Tom C. Clark, Associate Justice of the U.S. Supreme Court is sitting by designation.

**Hon. Robert A. Grant, Sr. District Judge for the Northern District of Indiana is sitting by designation.

The following sentences are stricken: "While there was no objection to the admission of the evidence of the witness Suter when she called Knapp a crook and stated he told her that he went to school to learn how to be a crook, Knapp now claims error. We find that this testimony does not reach the degree of plain error affecting substantial rights to warrant reversal. Furthermore, the failure to object is a waiver to claim it here."

In their place are substituted the following: "Nor was it error to admit the testimony of the witness Suter. When she called Knapp a crook, he replied that he had gone to school to learn to be a crook, Knapp's failure to deny this accusation of Suter that he was a crook was probative of his knowledge and intent; and also refuted his reliance on Dr. Meyer to provide him with accurate statements of the doctor bills. *Glasser* v. *United States,* 315 U.S. 60, 81 (1942); also see *Altom* v. *United States,* 454 F.2d 289, 296 (7th Cir. 1971)."

IT IS ORDERED that the petition for rehearing and suggestion of appropriateness of a rehearing en banc be, in all other respects, DENIED.